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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,698	04/30/2001	Karen Mack	29930.4500	2897

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EXAMINER	
MEDLEY, MARGARET B	
ART UNIT	PAPER NUMBER
1714	

DATE MAILED: 05/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/846,698	Applicant(s) MACK ET AL.
	Examiner Margaret B. Medley	Art Unit 1714

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) *13-16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This Office action is in response to Paper No. 6 dated April 7, 2003. Applicants elected with traverse Group I, claims 1-12 drawn to a glitter candle composition. The pending claims of record are claims 1-16. The non-elected claims 13-16 of Group II are withdrawn from consideration.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morrison et al (Morrison) 5,879,694 in view of Craig 5,383,954.

Morrison teaches a candle composition comprising a candle matrix and a glitter material, column 2, lines 28-61, and column 7, lines 55-56. Morrison is silent to the physical and

chemical properties of its glitter material and its relative proportion for adding to the candle matrix.

It is the examiner's position that the use of a glitter material with the physical and chemical properties and relative proportion of the instant claims would be obvious in view of Craig.

Craig teaches that at the time of the claimed invention that suitable glitter includes metal particles or flakes of aluminum and that non-metallic glitters include particles or flakes of polyesters (claims 4, line 62 to col. 5, line 9), and that the glitter may be of dimensions of less than about 0.005 x 0.05 x 0.005 cm, less than 0.03 x 0.03 x 0.003, or even about 0.01 x 0.01 x 0.001 cm, column 5 lines 15-26 and that the glitter is present in suitable amounts of less than 15%, 3 to 10% and 4 + 8%, column 5, lines 27-33. Craig further teaches that it is mostly preferred that the glitter does not produce irritating fumes, column 5, lines 37-38, providing the motivation not to use glitter that produces noxious or harmful emissions and is substantially free of heavy metals. Craig also teaches that mica functioning as a pigment dispersant or extender may be included in its solid marking composition comprising a waxy material, column 5 lines 42-47 and 51.

It would have been obvious to the artisan in the art to add the glitter and mica and relative proportion thereof of Craig to the candle composition of Morrison with the reasonable expectation that the glitter would not produce noxious or harmful emission e.g. carbon dioxide, carbon monoxide, nitrous oxide, cyanide gas, carcinogens comprising acrolein, metacrylic acid, and acetaldehyde and free of unpolymerized monomers, and that when mica is the selected glitter that the mica is substantially free of arsenic, calcium, lead, mercury and zinc metals, that it

is present in proportion of less than 10 ppm, which produces noxious or harmful emissions upon combustion rendering the instant claims obvious.

With respect to claim 9, the prior art does not teaches the specific range of about 0.000 1% to 0.1%, but the examiners takes the position that the broad range of less than 15% and example 1 preferred range of 1-15% of Craig suggests the instant claimed range in the absent of data of record to the contrary and therefore claim9 is rendered obvious.

With respect to claim 12, the prior art is silent to the glitter specific trade mark names, but the examiner's position is that there is nothing patentable distinct between the glitters of claim 12 and those of Craig and therefore claim 12 is rendered obvious.

The prior art cited and not relied upon further teaches candles and additives of the same nature of the instant claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is (703) 308-2518. The examiner can normally be reached on Monday--Friday from 7:30 a.m. to 6:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

M.B. Medley/dh
May 13, 2003

Margaret B. Medley
MARGARET MEDLEY
PRIMARY EXAMINER